IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7615 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

CHANDUBHAI DAHYABHAI LAD - Petitioner(s)

Versus

DIST COLLECTOR & 1 - Respondent(s)

==========

Appearance :

MR BJ JADEJA for Petitioner(s) : 1,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment

and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 30.6.1988 passed in Revision Application No. SRD/14/1987 in dismissing the same and confirming the order passed by the Collector, Surat dated 3.11.1987 passed in appeal No.437/1987.

2. The dispute is with regard to the property/land bearing S.No. 22-B Block No.20- property Card Register No.303 admeasuring 16 x 78 feets situated at village Kathor, Taluka Kamrej. The aforesaid property was originally owned by land owner Dhanuben Mohanbhai Rathod and the possession of the same was entrusted to the petitioner by way of Satakhat dated 9.6.1980 for consideration of Rs.1500/- and it appears that subsequently, sale-deed has also taken place on 18.1.1983. Proceedings under Section 73-AA of the Bombay Land Revenue Code were initiated by the Dy. Collector, Vyara and the Dy. Collector, Vyara vide its order dated 23.2.1987-13.4.1987 held that transfer/sale in favour of the petitioner is in breach of Section 73-AA of the Bombay Land Revenue Code and directed to enter the name of the Government

and further passed order directing the petitioner to pay Rs.4800/- by way of penalty. Being aggrieved and dissatisfied with the order passed by the Dy. Collector, Vyara dated 23.2.1987 passed in Case No. JMN/73-AA/Kathor/8485, the petitioner preferred appeal before the Collector, Surat being Appeal No.437 of 1987 and the Collector, Surat vide its order dated 3.11.1987 dismissed the said appeal. Being aggrieved and dissatisfied with the order passed by the Collector, Surat dated 3.11.1987 passed in Appeal No.437 of 1987, the petitioner preferred Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No. SRD/14/1987 and the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 27.6.1988 dismissed the said Revision Application confirming the orders passed by both the authorities below. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 27.6.1988 passed in Revision Application No.14/87, the petitioner has preferred the present Special

Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri B.J.Jadeja, learned advocate appearing on behalf of the petitioner has vehemently submitted that the transfer was by way of Satakhat dated 9.6.1980 and Section 73-AA came to be introduced for the first time in the year 1981 and therefore, the same could not have been applicable retrospectively and when the proceedings are initiated for breach of Section 73-AA at the time of transfer, Section 73-AA was not in force and therefore, all the authorities below have materially erred in holding that there is breach of Section 73-AA of the Bombay Land Revenue Code. He has further submitted that in fact said Dhanuben was not the owner of the proper in question. He has further submitted that in fact assuming that said Dhanuben was considered to be the owner of the property in question as petitioners had purchased the said property from her, in that case also, there is no evidence on record that said Dhanuben was an Adivasi and therefore, the transaction is hit by Section 73-AA of the Bombay Land Revenue Code and

hence, it is requested to allow the present Special Civil Application.

4. Shri M.R.Mengde, learned AGP has supported the judgment and order passed by Secretary (Appeals) as well as the orders passed by the Collector, Surat and Dy. Collector, Vyara. He has submitted that all three authorities below have concurrently found that there is breach of Section 73-AA of the Bombay Land Revenue Code and the finding of the authorities below need not required to be interfered with by this Court in exercise of powers under Articles 226 and 227 of the Constitution of India. He has further submitted that once the petitioner has purchased the property from said Dhanuben, it is not open for the petitioner to contend that said Dhanuben was not the owner of the property in question. He has further submitted that as observed by the Collector in its order that said Dhanuben was Hindu Halpati and therefore, she was an Adivasi and therefore, the contention on behalf of the petitioner that there is no evidence that said Dhanuben belongs to Adivasi community and hence, there is no breach of Section 73-AA of the Bombay

Land Revenue Code, cannot be accepted and it is therefore requested to dismiss the present Special Civil Application.

5. It is the case on behalf of the petitioner that as such the petitioner was in possession of the property in question which is a hut in trible are since more than 12 years from the date of Satakhat. Even the Satakhat also came to be executed on 9.6.19080 and it is so stated in the Satakhat itself that the petitioner is in possession of the hut since many years and by the said Satakhat it is to be considered that the petitioner continues to be in possession. It is, therefore, submitted that even if it to be assumed that the petitioner in possession from the date of Satakhat then also the same is dated 9.6.1980 and provisions of Section-73-AA came to be introduced for the first time in the year 1981 i.e after the Satakhat and / or transfer and therefore, the provisions of Section-73-AA could not have been made applicable retrospectively. I have gone through the Satakhat and in which it is also stated that the petitioner is handed over possession. In view of the

above, the finding of fact given by all the authorities below that there is breach of Section-73-AA of the Bombay Land Revenue Code, cannot be sustained. The aforesaid aspect has not been considered by any of the authority below, more particularly, the Secretary (Appeals) though the same was raised. However, as the matter is of the year 1988, it will not be proper on the part of this Court to remand the matter to the Secretary (Appeals), Revenue Department for deciding the same afresh and therefore, this Court has considered above argument and it is found that Section-73-AA would not have been made applicable retrospectively as transfer has already been taken place much earlier i.e before introduction of Section-7-AA of the Bombay Land Revenue Code.

6. For the reasons stated above, the petition succeeds. The judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 30.6.1988 passed in Revision Application No. SRD/14/1987, the order passed by the Collector, Surat dated 3.11.1987 passed

in appeal No.437/1987 as well as the order passed by the Deputy Collector, Vyara dated 23.2.87 are hereby quashed and set aside.

7. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.SHAH, J.]

=kailash=